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Services Company, Inc.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re**

**LEHMAN BROTHERS HOLDINGS INC.,**  
*et al.*

**Debtors.**

**Chapter 11 Case No.**

**08-13555 (JMP)**

**(Jointly Administered)**

**BARCLAYS CAPITAL INC.,**

**Movant for Rule 60(b) Relief,**

**v.**

**AMERICAN EXPRESS TRAVEL  
RELATED  
SERVICES COMPANY,  
Respondent.**

**AFFIDAVIT OF ROY TAUB IN  
SUPPORT OF AMEX'S MOTION  
TO COMPEL THE DISCLOSURE  
OF ALLEGEDLY PRIVILEGED  
COMMUNICATIONS AND DOCUMENTS**

**AMERICAN EXPRESS TRAVEL  
RELATED  
SERVICES COMPANY,**

**Movant for Rule 37 Relief,**

**v.**

**BARCLAYS CAPITAL INC.,**

**Respondent.**

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK )

Roy Taub, being duly sworn, declares under penalty of perjury that the following statements are true:

1. I am an associate at the law firm Dewey & LeBoeuf LLP, attorneys for American Express Travel Related Services Company (“AmEx”). I am a member of the bar of the United States District Court for the Southern District of New York. I submit this affidavit in support of AmEx’s Motion to Compel Disclosure of Allegedly Privileged Communications and Documents.

2. On February 6, 2009, Donna L. Gordon and I met and conferred by telephone with Jacob Pultman and Laura Martin, counsel for Barclays Capital Inc. (“Barclays”) regarding the discovery dispute about whether Barclays had properly asserted the attorney-client privilege and attorney work product protection to prevent AmEx from obtaining discovery at the deposition of Jason White. The parties were unable to reach a resolution.

3. On February 10, 2009, Eric M. Levine and I met and conferred by telephone with Laura Martin, counsel for Barclays regarding, among other things, whether Barclay’s assertion of privilege with respect to a document it claims was inadvertently produced – Barclays-AMEX004901-902 – is justified, and whether it should be reproduced in unredacted form. The parties were unable to resolve this dispute.

4. On February 11, 2009, the parties appeared before the Court for an informal conference regarding the discovery dispute about whether Barclays had properly asserted the attorney-client privilege and attorney work product protection to prevent AmEx

from obtaining discovery at the deposition of Jason White. The parties were unable to reach a resolution.

5. On February 17, 2009, the parties had a conference before the Court by telephone regarding other discovery disputes. During the telephonic conference, the Court directed the parties to further meet and confer about the outstanding discovery disputes during the remainder of the day, and stated that the telephonic conference and further meet and confer would satisfy a movant's obligations under Local Rule 7007-1(b).

6. The parties met and conferred in good faith on the other discovery disputes on February 17. Among the topics discussed during this meet and confer session was whether Barclay's assertion of privilege with respect to a document it claims was inadvertently produced – Barclays-AMEX004901-902 – is justified, and whether it should be reproduced in unredacted form. The parties were unable to resolve this dispute.

7. Attached hereto as Exhibit A is a true and correct copy of the Declaration of Jason White, dated November 7, 2008.

8. Attached hereto as Exhibit B are true and correct copies of excerpts of the transcript of the deposition of Jason White, taken on February 5, 2009.

9. Attached hereto as Exhibit C is a true and correct copy of the Declaration of Eugene J. Chikowski in Support of the Response of American Express Travel Related Services Company, Inc. to the Motion of Barclays Capital, Inc. for Relief Concerning an American Express Contract Erroneously Posted with the Closing Date Contracts, dated October 27, 2008, without exhibits.

10. Attached hereto as Exhibit D is a true and correct copy of a letter, dated February 11, 2009 from Michael S. Feldberg, counsel for Barclays, to the Court.

11. Attached hereto as Exhibit E are true and correct copies of excerpts of the transcript of the deposition of Simone Bunger-Pentney, taken on February 10, 2009.

12. Attached hereto as Exhibit F is a true and correct copy of Barclays's Privilege Log, which was served on AmEx on February 18, 2009.

13. Attached hereto as Exhibit G is a true and correct copy of a letter, dated February 4, 2009, from Laura Martin, counsel for Barclays, to counsel for AmEx.

14. Attached hereto as Exhibit H is a true and correct copy of a document produced by Barclays bearing bates numbers Barclays-AmEx004897 and Barclays-AmEx004901-902, with certain portions omitted.

15. Attached hereto as Exhibit I is a true and correct copy of Barclays's Privilege Log, which was served on AmEx on February 4, 2009.

I declare under penalty of perjury that the foregoing is true and correct.



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ROY TAUB

Sworn to before me  
this 20<sup>th</sup> day of February, 2009

Laura L. Saal  
Notary Public

LAURA L. SAAL  
NOTARY PUBLIC, State of New York  
No. 01SA6187588  
Qualified in New York County  
Commission Expires May 19, 2012